Office - Supreme Court, U.S.
FILED
OCT 15 1957
JOHN T. FEY, Clerk

In the Supreme Court of the United States

October Term A. D. 1957

No. 427

NORTH CENTRAL PUBLIC SERVICE COMPANY,
IOWA PUBLIC SERVICE COMPANY,
IOWA POWER AND LIGHT COMPANY,
IOWA ELECTRIC LIGHT AND POWER COMPANY,
and COUNCIL BLUFFS GAS COMPANY,

Petitioners,

vs.

NORTHERN NATURAL GAS COMPANY, and
FEDERAL POWER COMMISSION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF OF PETITIONERS

RAYMOND A. SMITH,
301-8 Park Building,
Council Bluffs, Iowa.
Attorney for Petitioners.

NED WILLIS,
BYRON L. SIFFORD,
S. F. WADDEN,
HUBERT C. JONES,
HENRY REED,
JOHN F. GASTON,
Attorneys for petitioners.

COCKLE PRINTING COMPANY, LAW BRIEFS, OMAHA

INDEX

	Page
Argument	1

Authorities:

Central States Electric Company v. City of Muscatine, 324 U. S. 138, 65 S. Ct. 565, 89 L. Ed. 801	1
Federal Power Commission v. Interstate Natural Gas Company, 336 U. S. 577, 69 S. Ct. 775, 93 L. Ed. 895	1
Cities Service Gas Company v. Federal Power Commission, 176 F. 2nd 548	2

In the
Supreme Court of the United States

October Term A. D. 1957

No. 427

NORTH CENTRAL PUBLIC SERVICE COMPANY,
IOWA PUBLIC SERVICE COMPANY,
IOWA POWER AND LIGHT COMPANY,
IOWA ELECTRIC LIGHT AND POWER COMPANY,
and COUNCIL BLUFFS GAS COMPANY,

Petitioners,

vs.

NORTHERN NATURAL GAS COMPANY, and
FEDERAL POWER COMMISSION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF OF PETITIONERS

ARGUMENT

In the brief of Federal Power Commission it is stated that petitioners did not mention the decision of this Court in *Federal Power Commission vs Interstate Natural Gas Company*, 336 U. S. 577, and that that case sharply limits the decision in *Central States Electric Company v. City of Muscatine*, 324 U. S. 138. Brief comment must be made on this statement.

Petitioners did not cite that case for the reasons that the Court was there dealing with interstate pipe-

line companies engaged in the wholesale distribution of natural gas and as such, expressly subject to federal jurisdiction under the Natural Gas Act, and that the Central States case was not overruled by that decision and, therefore, must be considered the law applicable to these petitioners and their consumers. Regardless of what the Court said in that opinion, it is not authority for the claim that the federal courts have the power and jurisdiction to regulate and adjudicate the respective rights of these petitioners and their ultimate consumers to this refund. That determination must be made under the laws of the State of Iowa."

Comment is made by Federal Power Commission upon the case of *Cities Service Gas Company v. Federal Power Commission*, 176 F. 2nd 548 (C.A. 10), which attempts to limit the scope and effect of that opinion. It is very obvious from an examination of the decision that the Tenth Circuit Court of Appeals considered the Muscatine case to be the law applicable to local distributors, not engaged in interstate commerce, such as these petitioners are, when after an exhaustive review of the decisions in the Muscatine and Interstate Natural Gas Company cases, the Court said:

> "We, accordingly, conclude that the Muscatine case is not overruled and that it applies to those cases in which the distributing companies are local companies, not engaged in commerce, while those cases in which the distributing companies claiming the fund as against the pipeline companies are engaged in commerce fall within the decision in the Interstate Natural Gas Company case. It seems to us that if the Muscatine case is to be given force and effect, the conclusion must be that in those cases in which the local distributing companies are en-

gaged in intrastate business only, the Federal Court is without jurisdiction to adjudicate a controversy as to the ownership of the impounded funds between such companies and the ultimate consumers, and that in such cases it should withhold distribution of the funds to afford the ultimate consumers an opportunity to have an adjudication of such controversy in a timely proceeding filed in a state tribunal of competent jurisdiction. If we are in error in this then we fail to see what, if anything, is left of the Muscatine case."

Had the Circuit Court of Appeals for the Eighth Circuit followed this reasoning, it would have ordered the refund paid to these petitioners as there was no dispute between them and their ultimate consumers. Thus the quotation shows the present disagreement between the Circuit Courts as to the state of the law.

It is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

RAYMOND A. SMITH,
301-8 Park Building,
Council Bluffs, Iowa,
Attorney for Petitioners and Council Bluffs Gas Company.

NED WILLIS,
Perry, Iowa,
Attorney for North Central Public Service Company.

BYRON L. SIFFORD,
S. F. WADDEN,
750-760 Orpheum Electric Building,
Sioux City, Iowa,
Attorneys for Iowa Public Service Company.

HUBERT C. JONES,

1215 Equitable Building,

HENRY REED,

823 Walnut Street,
Des Moines, Iowa,

Attorneys for Iowa Power & Light Company.

JOHN F. GASTON,

P. O. Box 351,
Cedar Rapids, Iowa,

Attorney for Iowa Electric Light & Power Company.